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1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

EXAMINER

VARNUM, RYAN A

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3751

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/579,353	Applicant(s) HINES ET AL.	
	Examiner Ryan A. Varnum	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2010 and 22 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-6,9-14 and 16-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6,9-14 and 16-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on *** has been entered.

2. As directed by the amendment filed on 2/22/2010: claims 1 and 9 have been amended, claims 3, 7, 8 and 15 have been cancelled and claims 16-25 have been added. Thus, claims 1, 2, 4-6, 9-14 and 16-25 are presently pending in this application.

Claim Objections

3. The amendment to the claims is not in accordance with 37 CFR 1.121 which requires that any claim added by amendment must be indicated with the status of "new" and presented in clean version. See 37 CFR 1.121(c)(3).

4. Attention is directed to "new" Claim 23, as first presented on 2/22/2010. As presented, Claim 23 is marked as "new" and contains annotations indicating cancelled subject matter, in contradiction to the requirements of 37 CFR 1.121. Accordingly, as best understood by the Examiner upon a reading of the complete listing of the claims, and with particular attention to Claim 25; for the purposes of this examination Claim 23

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will be interpreted as claiming all the recited subject matter, with the exception of that subject matter which has been annotated with a strikethrough.

5. Claims 1, 2, 22, 23 and 25 are objected to because of the following informalities: these claims recite the limitations of "a fabric cleaning liquid" and "cleaning fluid". To the extent that the terms "liquid" and "fluid" are not entirely coextensive, it is recommended that Applicant amend the claims such that the terminology is consistent throughout. Appropriate correction is required.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 2, 4-6, 9, 11, 14, 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murgida et al. (US Patent 6,231,259) in view of Tani (US Patent 5,653,338), as further evidenced by Zimmerman (US Patent 3,896,822).

8. In re Claim 1, Murgida discloses a dispensing device comprising: a reservoir containing a liquid 12 (Fig. 1; Column 2, Lines 13-15 and Column 4 Line 67 to Column 5, Line 1), and a dispensing orifice ("container opening"; See Fig.'s 1-2; Column 4, Lines 65-66; the orifice being defined by the opening in the support skirt 38) in fluid communication with the reservoir (See Fig. 1). There is a movable platform 22 (Fig. 1; Column 5, Line 2) movable by a screw mechanism 26 ("transport mechanism"; Fig. 1;

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Column 5, Line 4). Rotation of the screw mechanism advances the movable platform against the stored fluid thereby dispensing a metered dose of the fluid from the reservoir (Column 5, Lines 4-13). The reservoir and the movable platform are non-circular in cross section (See Fig. 2) to resist rotation of the platform relative to the reservoir.

9. Although Murgida does not disclose the screw mechanism having two threaded shafts, attention is directed to Tani which discloses a dispensing device comprising a screw mechanism, wherein the screw mechanism comprises a first threaded shaft 6 ("intermediate cylinder"; Fig.'s 1-2; Column 4, Lines 66-67) having internal threads 8 ("helical grooves"; Fig.'s 1-2; Column 4, Line 67), and a second threaded shaft 9 ("shaft portion"; Fig.'s 1-2; Column 5, Lines 24-25) having external threads 10 ("projections"; Fig.'s 1-2 and 5; Column 5, Line 26) configured to engage the internal threads of the first threaded shaft (Fig. 2; Column 5, Lines 27-29), wherein the second threaded shaft is fixed to a movable platform 14 ("holder"; Fig.'s 1-2; Column 4, Line 40), for the purpose of providing the device with a compound screw mechanism which permits the device to be reduced in overall length (Column 1, Lines 8-11).

10. Accordingly, it would have been obvious to a person having ordinary skill in the art, at the time the invention was made, to modify the device of Murgida by constructing the device with a compound screw mechanism comprising a first and second threaded shafts engaged with one another, as taught by Tani, for the purpose of reducing the overall length of the device.

11. Furthermore, although Murgida does not disclose the liquid contained in the reservoir being specifically a fabric cleaning liquid, it is the Examiner's opinion that it

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would have been obvious to a person having ordinary skill in the art at the time of the invention to provide the device with any liquid, including a fabric cleaning liquid, to facilitate use of the device in the desired application, since it has been held that “expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim.” *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). This is especially true in this instance where it was known in the art at the time of the invention to provide fabric cleaning liquid in an applicator device having an applicator surface enabling scrubbing of a soiled surface, as evidenced by Zimmerman (Abstract).

12. In re Claims 2, 4, 5, 6, 11 and 14, Murgida further discloses the platform 22 (Fig. 1) comprises a base portion of the reservoir (See Fig. 1), and sliding the platform within the reservoir progressively reduces the volume of the reservoir thereby forcing the fluid to exit the reservoir (Column 5, Lines 4-13). The cross section of the reservoir and platform include a non-curved section (See Fig. 2; it being seen that the oval cross section comprises straight edges on the top and bottom of the figure). The reservoir is uniform in cross section along the length in which the platform moves (See Fig.'s 1-2). The platform is configured for reciprocal generally axial movement internally of the reservoir (Column 5, Lines 4-13). A scrubbing member 24 (“porous dome”; Fig.' 1-2; Column 5, Lines 2-3; it being understood that the dome is capable of being used as a scrubbing member) fixed over a top wall of the reservoir adjacent the dispensing orifice (See Fig.'s 1-2; the top wall being defined by the rim of the neck 16, and the orifice being defined by opening in support skirt 38). There is a removable end piece 38

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("support skirt"; Column 5, Lines 23-25) that forms a top of the reservoir (See Fig.'s 1-2), the orifice being located in the end piece (as previously discussed).

13. In re Claims 9 and 17-21, Tani further discloses an actuator 4 ("base cylinder"; Fig.'s 1-20) for actuating and rotating the screw mechanism (Column 6, Lines 9-23), wherein the actuator forms a base portion of the device (See Fig.'s 1-2). The actuator includes a third threaded shaft 20 ("inner cylinder"; Fig.'s 1-2; Column 4, Line 23) having internal threads 5 ("helical grooves"; Fig.'s 1-2; Column 4, Line 24). The first threaded shaft 6 (Fig.'s 1-2) has external threads 7 ("projections"; Fig.'s 1-2; and 8; Column 5, Line 18) configured to engage with the internal threads 5 (Fig.'s 1-2) of the third threaded shaft 20 (Fig.'s 1-2; Column 5, Lines 16-20). The screw actuator 4 (Fig.'s 1-2) is fixed to a base portion of the device (See Fig.'s 1-2), and wherein the screw actuator and the base portion rotate together as a single unit relative to the reservoir (Column 6, Lines 9-11). The screw actuator is configured to be turned in a first direction to advance the movable platform a set distance upward within the reservoir, and turned in a second direction that is opposite to the first direction to retract the movable platform (Column 5, Line 62 to Column 6, Line 23; it being understood that the screw mechanism operates in both extending and withdrawing the components). Rotation of the screw actuator in the first direction rotates and advances the first threaded shaft (Column 6, Lines 9-16), whereby the first threaded shaft rotates and advances the second threaded shaft, and whereby the second threaded shaft advances the movable platform (Column 6, Lines 16-23).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murgida in view of Tani, as further evidenced by Zimmerman and Berghahn et al. (US Patent 4,111,567).

16. In re Claim 12, as discussed above in regard to Claim 1, the combination of Murgida/Tani, as further evidenced by Zimmerman, renders unpatentable all the claimed features, further including a scrubbing member 24 (""; Fig.'s 1-2; Column 5, Lines 19-20; it being understood that the dome 24 is capable of being used to scrub) comprising a mesh formed from polyethylene (See Murgida: Column 5, Lines 19-20), although Murgida does not disclose the polyethylene being a high density polyethylene.

17. However, it is the Examiner's opinion that it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the scrubbing member of high density polyethylene, rather than low density polyethylene, for the purpose of choosing a material having optimal characteristics for the desired application of the device, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. This is especially true in this instance where Murgida discloses the use of low density polyethylene, and where it was

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known in the art at the time that low density polyethylene may be substituted with high density polyethylene in order to achieve a desired porosity and flow rate, as further evidenced by Berghahn (Column 4, Lines 33-65).

18. In re Claim 13, Murgida further discloses the scrubbing member comprises a multiple dispensing orifices 34 ("interconnected pores"; Column 5, Lines 19-21). It further being understood that a high density polyethylene would likewise contain multiple dispensing orifices, as further evidenced by Berghahn (Column 4, Lines 33-65).

19. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murgida in view of Tani, as further evidenced by Zimmerman and Zhen (WIPO Publication WO 97/12027; as provided with the action issued 6/4/2009).

20. In re Claim 22, as discussed above in regard to Claim 1, the combination of Murgida/Tani, as further evidenced by Zimmerman, renders all the claimed features unpatentable; with the exception of the specific fabric cleaning liquid. However, as held by *Thibault* (See Claim 1 above) "expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim."

21. This is especially true in this instance where the specific fabric cleaner recited in Claim 22 was known in the art at the time of the invention, as evidenced by Zhen (See Zhen: Page 3, Lines 19-25), and where it was further known in the art at the time of the invention to provide a fabric cleaning liquid in an applicator device having an applicator surface enabling scrubbing of a soiled surface, as evidenced by Zimmerman (Abstract).

22. Claims 10, 16, 23 and 24, are rejected under 35 U.S.C. 103(a) as being unpatentable over Murgida in view of Tani, as evidenced by Zimmerman, and further in view of Fattori (US Patent 5,697,531).

23. In re Claims 16 and 23, as discussed above in regard to Claim 1, the combination of Murgida/Tani, as further evidenced by Zimmerman, renders all the claimed features unpatentable, including the further limitation of neither the first nor second threaded shafts extending through the movable platform into the reservoir (See Tani: Fig.'s 1-2).

24. Although it is not disclosed that the second threaded shaft is configured to rotate without rotating the moving platform, attention is directed to Fattori which teaches a dispenser device for fluid substances comprising a threaded shaft 19 ("helical track"; Fig.'s 1, 2 and 4; Column 6, Lines 22-23) fixed to a movable platform 11 ("elevator cup"; Fig.'s 1-2, and 5-8; Column 6, Lines 20-21), wherein the threaded shaft is configured to rotate (Column 6, Lines 22-23) without rotating the moving platform (See Fig.'s 5-10; it being seen that the elevator cup is depicted in a non-circular shape and is engaged with the helical track 19 by way of an elevator member 13 and retaining member 51, which enables the elevator cup to be moved axially but non-rotatably), for the purpose of providing a moving platform which moves axially with a spring biasing action, thereby preventing weeping of the contained fluid onto the applicator surface (Column 6, Lines 55-60 and Column 1, Lines 25-32 and 45-54).

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25. Accordingly, it would have been obvious to a person having ordinary skill in the art, at the time the invention was made, to further modify the device of Murgida by constructing the screw mechanism such that the threaded shaft may rotate without rotating the moving platform, as taught by Fattori, for the purpose of providing a moving platform which moves axially with a spring biasing action and thereby prevents weeping of the contained fluid onto the applicator surface.

26. In re Claim 10, Fattori further discloses the platform 11 (Fig.'s 1 and 7) comprises a flexible peripheral edge 39 ("seal"; Fig. 1; Column 5, Lines 61-63) configured to slide in a sealing relationship with an inner surface of the reservoir (Column 7, Lines 21-30).

27. In re Claim 24, Murgida further discloses the reservoir and the movable platform 22 (Fig. 1) are non-circular in cross section (See Fig.'s 1-2) to resist rotation of the platform relative to the reservoir.

28. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murgida in view of Tani, as evidenced by Zimmerman and Zhen, and further in view of Fattori.

29. In re Claim 25, the features of this claim are rendered unpatentable for the reasons discussed above in regard to Claim 23 and further in view of the holding in *Thibault* as discussed above in regards to Claims 1 and 22.

Response to Arguments

30. Applicant's arguments with respect to claims have been considered but are moot in view of the new grounds of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan A. Varnum whose telephone number is (571) 270-7853. The examiner can normally be reached on Monday - Friday, 9:00 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. A. V./
Examiner, Art Unit 3751

/Gregory L. Huson/

Supervisory Patent Examiner, Art Unit 3751